

**ENHANCING THE PUBLIC PROSECUTION IN JORDAN:
SUPPORTING A FORCE FOR GOOD IN DIFFICULT TIMES**

I. EXECUTIVE SUMMARY

2011 was a year of great change in Jordan. As the Arab spring swept through the region the government was faced with calls for substantial reform. And by the fall of 2011 substantial constitutional reforms were in place.

One of these reforms was a newly independent judiciary removed from the ambit of the Ministry of Justice. Although the Jordanian judiciary enjoys a relatively stable and successful history, this new found independence creates the need for substantial administrative reforms. To aid in these reforms the USAID Rule of Law Project recalibrated the fourth year of its judicial assistance plan. One of the changes is an increased emphasis on supporting the prosecution service within the judiciary.

This report is an assessment and planning document suggesting several areas where the Rule of Law program can provide that support. The report focuses on several issues facing the public prosecutors. It divides into five parts:

- (1) the legislative framework regulating the work of the public prosecutors;
- (2) training needs;
- (3) the feasibility of specialization within public prosecution;
- (4) administrative enhancements;
- (5) resource needs.

Legislative Structure: The legislative structure organizing the work of the public prosecutors is highly controversial. The way they are organized, their responsibilities and their authority is found in various provisions scattered across the statutes. Although there is general agreement that change is needed, what that change should be is subject to profound disagreement.

Some public prosecutors want to break with the judiciary altogether, others (probably a majority) wish to organize themselves within the judiciary but under a separate law. A last group resists any structural change and consents only to minor repairs within the existing law on criminal procedure.

There is no international best practice in this area – prosecutorial schemes are as varied as the countries they serve. But in Jordan there is a long tradition of prosecution as a judicial function. And present needs (especially the need to exert authority over the police) strongly militate towards maintaining the prosecutors full judicial authority. At the same time, the public prosecutor's function is distinct from the task of a trial judge. It follows that the prosecutor's day-to-day administrative needs differ as well.

The rule of law plan suggests a modest addition to the law on the judiciary that includes the public prosecutors as a part of the judiciary but providing for a future statute on administration and hierarchy.

No matter what structure is adopted, legislative enhancement should also provide for reforms to the terms of service for the public prosecutors. Judges should be experienced before service as public prosecutors and only assigned if they show sufficient aptitude and desire. Judges should also serve minimum terms as public prosecutors. It is a waste of training and experience to pull a judge out of the prosecutor ranks in anything less than three years. This is also essential for building and preserving prosecutorial independence. Finally, judges should also receive service credit for their years as prosecutors when they are considered for promotion.

Training: The public prosecutors want and need more training. They understand that unlike trial judges, the prosecutors make important on the spot decisions that once done cannot be undone. They believe that too many cases have been seriously compromised or destroyed because of a bad decision made by the public prosecutor.

The rule of law training plan should focus on three areas: (1) building investigations; (2) complying with the law on criminal procedure; (3) new or emerging topics in the criminal law.

Public prosecutors – especially young prosecutors – find it tough to keep up with the police. They need solid grounding on the essentials of directing the police and forensic support at a crime scene and building effective case strategies that focus on the elements of an offense and exclude irrelevant material. It follows that training must also focus on strict compliance with the rules. The judicial investigation is the foundation of all that follows in the criminal justice process. If that foundation fails because it was not built according to the rules, the entire case will collapse.

The public prosecutors identified a list of substantive law training that would benefit veteran and novice public prosecutors alike.

- (1) Financial Crimes – especially the paper trail associated with organized crime, terrorism financing, human trafficking, fraud, and corruption.
- (2) Cyber-Crime –including tracking IP addresses, searching hard drives, and learning how to identify cell phone network data.
- (3) Forensic Science – including DNA, pathology, ballistics, tool mark and fingerprint analysis;
- (4) New Laws – Jordanian law is changing rapidly, as it does the public prosecutors need timely updates;
- (5) Family violence, child exploitation and sexual abuse-especially the best practices for navigating local customs and taboos in those areas.

The public prosecutors emphasized the need for timely training geared to their actual caseloads. They also support joint training with the police and other efforts to educate the public about the nature of their work and role in the criminal justice system.

Specialization: Jordanian public prosecutors recognize the advantages of specialization. Some specialization already exists in the form of the high felony prosecutors and other specialized courts but the public prosecution service is probably too small to support much more specialization – at least formally. Some topical specialization will occur naturally as offices face new types of crimes. The Chief Public Prosecutor should be empowered to designate or loan topic matter experts between jurisdictions when need arises.

One area of specialization the Judicial Council should consider is carving out a criminal bench. Concentrating criminal experience and knowledge in criminal practitioners will help the public prosecutors become effective leaders with the police and lead to better investigations. It is simply wasteful to train a public prosecutor, let him gain valuable experience, and then render it irrelevant by re-assigning them to civil work. A specialized criminal career track will conserve those scarce resources.

Administrative Enhancements: The public prosecutors identified several areas in which administrative changes could increase their effectiveness in building and completing cases. These included:

- Linking all of the relevant databases together and making them available to the public prosecutors. Prosecutors do not have timely access to criminal histories in making charging to detention decisions. Public prosecutors cannot find witnesses or out-of-custody suspects. Public prosecutors wait weeks or months to receive important test results. The cumbersome official request system for information should be scrapped and efforts made to allow public prosecutors direct electronic access to relevant government databases.
- Clarify the public prosecutors' relationship with the police. There is no question the public prosecutors are to lead investigations as the law expressly provides. But many public prosecutors complain their authority is toothless. They may not receive timely notice of a crime and must make official requests in the police chain of command for assistance. One solution is to create full-time judicial police as is found in Italy and France. But this is expensive and may antagonize the existing ministries. A better first step is to define the public prosecutors' authority and grant them the express power to command individual officers to take investigative measures. This should be coupled with express enforcement powers – police misconduct or dereliction should be handled in the civilian court system not the police courts.
- Other small steps will also help. Giving the public prosecutors jurisdiction over forensic labs, requiring the police to provide immediate notice of crime, creating a witness protection system, and providing greater personnel support will substantially enhance the ability of the public prosecutors to comply with the rules, protect human rights and build effective cases.

The failure to execute judgments is so serious that it dictates its own section in this plan. Up to 80 percent of judgments rendered by the court are never executed. This failure seriously undercuts the credibility of the Civilian Criminal Justice System – a system that must already compete with administrative detentions, security courts, police courts, and others. There are many causes of that failure and some mutual finger-pointing between the public prosecutors and the police. But they all agree that execution is “the graveyard” of cases.

To remedy this failure two steps should be taken:

- (1) Engage a court administrative expert to examine the existing process – identify the gaps and recommend immediate reforms.
- (2) Begin a pilot program in a single public prosecutors’ office that scraps the existing verification-execution department model in favor of a dedicated public prosecutor, three police officers, sufficient tools (a car, database access, and uninterrupted time) to drive the execution rate up. Several public prosecutors believe that this simple step could drive the rate up substantially.

Resources: The public prosecution service is understaffed and, in part, works in facilities that undermine the message of dignity and sovereignty that a public prosecution office should send.

While the public prosecutors do keep up with their caseload, it is at great personal cost and most likely results giving many cases a bare minimum of work. And the public prosecutors acknowledge that understaffing causes their other duties – crime scenes, autopsy, and jail visits to suffer. These other duties are central to balancing the authority of the police and the fair administration of justice. Staffing levels should reflect these needs.

Some public prosecutor offices are equally inadequate. There are offices that are modern, clean, and reflect the dignity of a court but many (especially in outlying areas) are rental facilities that are “gritty” at best. They send a poor message to the public and undermine the seriousness of the work. Upgrades to ensure that all offices reflect the dignity of the court are in order.

II. INTRODUCTION

In January 2011, the Jordan Rule of Law Project contracted with Paul Scoggin, a career prosecutor from the United States, for an assessment plan for the Jordanian Public Prosecution Service.¹ The assessment and plan is a subset of a larger fourth year rule of law program undertaken by USAID and administered by TETRA TECH – DPK.

The program seeks to assist the Jordanian government navigate a critical time in its history. The Jordanian government, reacting to unrest sweeping through the Arab world in 2011, enacted several constitutional reforms. Among those reforms is a newly invigorated Judicial Council now responsible for administration of the courts.² Those courts, in turn, are now expressly recognized as “independent.”

These sweeping amendments triggered a change in the rule of law four-year plan. The program continues to seek a “modern, independent professional judicial system consistent with international standards” but with “new support to the prosecution function.”³ This assessment and proposed plan seeks to lay the groundwork for that enhanced prosecutorial support.

III. THE BASIS FOR THE ASSESSMENT AND PLAN

This report is based on several sources:

- (1) a review of various papers concerning the history of the 2011 constitutional reforms, the history of the Jordanian judiciary, and the expected effects of the new law on the judicial function;
- (2) the results of a ten-page questionnaire created by the Rule of Law Project and vetted with the Judicial Council (attached as Appendix A). The questionnaire roughly divided into five parts – legislation, training, specialization, administrative issues, and resources;
- (3) three day long workshops attended by approximately 70 of the 91 public prosecutors in Jordan and attendance at a judicial workshop on redrafting the criminal procedure law;

¹ The author of this plan is a nearly thirty year prosecutor in the state of Minnesota in the United States. The author served as chief of the first instance violent crime office and leader of the appellate (second instance) and financial crime units as well. The author’s international experience includes a term as a prosecutor with EULEX – Kosovo and consulting work with the OSCE Rule of Law Project in Macedonia as well as the JSAP Program in Ramallah, Palestine.

² Article 98, Constitution of the Hashemite Kingdom of Jordan (2011).

³ Rule of Law Program – Annual Plan, Fourth Year, USAID, Amman, Jordan, Task Order No. 02, Contract 263-I-02-06-00019-00, implemented by TETRA TECH – DPK, page 1.

- (4) interviews with the Chief Public Prosecutor, the head of the Judicial Council's training and development unit and members of a police investigation unit based in Amman;
- (5) office visits to public prosecution offices in West Amman, South Amman, Irbid, Madaba, East Amman, the Amman Attorney General's Office, Central Amman, and the High Felony Unit. Those visits took place between 1/30/12 and 2/13/12.⁴

IV. ASSESSMENT AND IMPRESSIONS

As an initial matter, no observer of the judges assigned to the Public Prosecution Service in Jordan can ignore their energy, devotion to duty, and desire to strengthen the public trust and confidence in the prosecution service. The prosecutors recognize the long legal tradition of the Kingdom and want to see the profession rise to the challenges of a changing Arab world.⁵

The public prosecutors' zest, education, and introspection yielded a wealth of information and opinions on desired changes to the structure and resources of the prosecution service. It is difficult to summarize all of those ideas. But for organizational purposes this report divides itself into five parts or pillars:

- Legislative Amendments
- Training suggestions
- The need for specialization
- Administrative enhancements
- Resources

A. Legislative Adjustments

i. The law on public prosecution

⁴ Visiting so many offices in such a short time would not be possible without the gracious support of Mr. Essa Saleh Maymoun, technical advisor; Ms. Lamees Al Helou, translator; and Mr. Robert Dean, Chief of Party for the Rule of Law Program. My thanks for their patience during long hours in the car, expert technical advice, and translation.

⁵ In Jordan, prosecutors are judges. And being a judge is an important part of a prosecutor's self-image. During their careers judges may be assigned to various levels in the court system and, at some point, a judge may serve as a prosecutor. At present, 91 judges out of approximately 900 nationwide are assigned as prosecutors. The prosecutors-as-judges arrangement is typical in "code" legal systems. The code system came to Jordan via the Ottoman Empire's adoption of the Napoleonic Code in the nineteenth century. *See also*, The Separation of Powers: Historical and Comparative Perspectives, Rainer Grote and Tilmann Roder in *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (2011), Grote and Roder (editors).

No topic engendered more discussion than proposals to create a new law on public prosecution. In the current scheme, the public prosecutor's hierarchy, authority, and responsibilities are scattered throughout the statutes – especially in the law of criminal procedure.

The pre-visit questionnaire suggested nearly unanimous support for the statement “there is a pressing need to review all the legislation regulating the investigative procedure and governing the work of the public prosecutor in order to amend” it. 98.2 percent of respondents agreed or strongly agreed with this statement.⁶

The overwhelming agreement with the need for change notwithstanding, there is little agreement on what form this change should take. A vocal and forceful minority believe that the time has come to separate the prosecution from the judicial function. Many others called for the creation of a separate law in public prosecution but one that expressly retains the judicial status of the prosecutors. A last group resists structural realignment at all and would limit the changes to a set of smaller amendments to the law and criminal procedure.

Although several public prosecutors suggested the creation of a public prosecution service separate from the judiciary was in accord with best international standards, there is no dominant international structure. In the common law tradition the public prosecutor is most often separate from the judicial function. But in code jurisdictions there is no single pattern. In France, Italy, and Turkey prosecutors are judicial officers but in a majority of European continental countries they are not.⁷

The majority of public prosecutors are not ready for such a substantial realignment. They made it very clear that “we are judges” and have no desire to do anything that compromises that status. A larger number of public prosecutors, however, do support the creation of a separate law on the public prosecution *within the judiciary*. They believe the lack of a separate enabling statute leaves them in a sort of legal limbo – with a less than certain relationship with the police and subject to arbitrary transfers within the judiciary. They fear that the lack of a defined role leaves their future uncertain and discourages building stability and traditions within the prosecution service. They also point to their Arab neighbors and European precedent – almost all of whom enjoy concrete defined statutes in law.⁸

⁶ Public Prosecution Questionnaire, p. 1 (attached as Appendix A).

⁷ A summary of the various European legislative prosecution frameworks may be found at: www.euro-justice.com/member_states/

⁸ And, by and large, they are right, *see* footnote 7. The lack of a defined constitutional and statutory role can be problematic. In Belgium, attempts to define the role of the public prosecutor in the absence of a clear statutory definition have twisted the system in knots. As one commentator put it, “... over the years legendary discussions have taken place about the exact relationship between the Public Prosecution Service and the Minister of Justice . . . the theoretical discussion to which power the public prosecutor's office actually belongs sometimes resembles the abstract discussion on the exact gender of angels,” Country Report, Belgium, August 2004, www.euro-justice.com/member_states/Belgium/country_report/.

Even this position, however, has critics. Some public prosecutors believe a separate hierarchy for the public prosecutors would create a “two-headed” structure with the public prosecutors ultimately accountable to both the Chief Public Prosecutor (or some sort of prosecutorial council) and the Judicial Council. They fear that if the public prosecutors slip out from the protection of the judiciary (and the new articles protecting the judiciary’s independence) they may be reabsorbed into the Ministry of Justice thus negating one of the chief gains of the 2011 amendments. While this group agrees some clarification of the prosecutor’s role is necessary, they insist that a set of minor amendments to the law on criminal procedure is all that is required.

Moreover, the critics note, an attempt to create a separate law on public prosecution was recently rejected by the parliament. Some suggest the bill failed due to the “two-headed” argument; others believe the bill failed because the prosecutors would have been folded back into the Ministry of Justice.

In considering these three positions certain truths emerged. First, the fact that public prosecutors are judges is a force for good in Jordan. They form an important check on police powers and other extra-judicial authority. Second, the public prosecutors need judicial authority to compete with these other authorities. Third, the protection of their independent authority (in the form of remaining judges) is an important step in building and keeping public confidence in the judiciary as a state institution.

Thus, the creation of a common law style prosecutor as part of the executive branch of government is not appropriate for Jordan. And leaving the public prosecutor as a stand-alone “fourth branch” of government is not much better. The prosecutors need judicial authority and the temptation to reabsorb prosecutors into a government ministry if they are not judges would simply be too much.⁹

But it is equally true that in the fast changing landscape of the Jordanian criminal justice system, public prosecutors need a sure footing, a clear hierarchy, defined minimum qualifications for appointment, and security and tenure once appointed. The public prosecutors also need clearly defined authority in relationship to other parts of government (especially the police). Something more than the vague directions of Article 27 simply naming the prosecutor as the head of the investigation is in order. They should remain within the judiciary but with a unified and clearly enunciated authority, hierarchy, and responsibilities.

Thus, a merger of a separate law and small amendments may be the best alternative. As is often true with difficult and delicate tasks, small incremental steps may work the best. As a first step a

⁹ A fascinating study on prosecutors as governmental orphans is found in a presentation by Mr. James Hamilton, Director of Public Prosecutions, Ireland, for the Council of Europe, Venice Commission, “The Independence of Judges and Prosecutors: Perspectives and Challenges, March 2011, www.venice.coe.int/dox/2011/CDL-UDT (2011) 008-E.pdf (reviewing the emerging and difficult trend to consider prosecutors a branch of government independent from both the executive ministries and the judiciary).

small amendment to the law on the judiciary should simply list the prosecution service as a subdivision of the judicial function just as any regional court is. The amendment could then provide that the hierarchy of the public service is organized as defined in law. This single provision affirms that the public prosecutors are fully embedded within the judiciary and their authority is an exercise of the judicial power but also recognizes they are organized separately within that judicial function.

Obviously, the second and more difficult step is to negotiate the terms of that organization between the Judicial Council, the Chief Public Prosecutor, and (for administrative and financial purposes) the Ministry of Justice. The “two-headed” problem is solvable. One solution is to affirm that the ultimate authority to set policy for the Public Prosecution Service rests in the Judicial Council but the day-to-day administrative authority for the working of the prosecution service rests with the Chief Public Prosecutor or some lesser body of which the Chief Public Prosecutor is a member.

A few public prosecutors pointed out that there are actual practical reasons for such an arrangement. The efficient operation of the prosecution function requires a fairly nimble administrative response. The Judicial Council, as a larger deliberative body, simply cannot act fast enough to respond to many of the prosecutors’ needs. The Judicial Council is perfectly suitable for setting general directions but allowing the Chief Public Prosecutor the freedom to apply those directions by making specific administrative decisions concerning resource allocation and personnel assignments will satisfy the day-to-day needs of the operation.

This sort of compromise preserves the prosecutor as part of the independent judiciary but recognizes the prosecutor’s separate role within the judiciary. It recognizes that the judiciary remains a single family albeit with members that serve very distinct roles.

ii. Terms of service

The public prosecutors strongly support legislative amendments concerning their terms of service. This takes three forms – minimum requirements for becoming a public prosecutor, protection while serving as a public prosecutor, and giving credit to the public prosecutor for their service when considering future promotions within the judiciary.

While the pre-visit survey was all over the map on what terms should regulate their service as public prosecutors, they agreed that the assignment as a public prosecutor should not be the first assignment as a judge.¹⁰ Most prosecutors agreed that their legal educations did not prepare

¹⁰ At one workshop, all five judges who were assigned to serve as public prosecutors as their original assignment agreed that they would have been more effective if they had served as conciliation court judges before becoming prosecutors.

them to be prosecutors and seeing police investigations for a few years as a conciliation judge provided helpful training for their performance as a prosecutor.¹¹

The public prosecutors are split on protection once assigned. There was general agreement that it made no sense to assign a public prosecutor to an office, let him or her learn the territory for a year, and then pull them out into another assignment. The split was over whether this was happening enough to require statutory protection. In either case, the public prosecutors agreed that service should be predicated on “desire” – and that a judge should only serve if they show an interest and aptitude for the work.

An appropriate balance between these factors might require an individual judge to demonstrate an interest and aptitude for the work but once placed be assured a minimum term of five years with removal only on a showing of good cause.¹² It is not enough to promote judicial independence. It is equally important to ensure the prosecutor’s independence as well. Establishing safeguards and minimum qualifications for prosecutors promotes stability and, in turn, encourages public confidence.

The last term of service request from the public prosecutors involves service credit for time spent prosecuting. Too often, the public prosecutors complained, they’re passed over for promotion by judges originally appointed at the same time, but who remain as trial judges. The public prosecutors believe that the Judicial Council (and the Ministry of Justice before them) failed to recognize their years of service as prosecutors in making promotion decisions.

As noted elsewhere, the work of a public prosecutor is difficult and requires great skill. The public prosecutor is entrusted by law with making decisions that, once done, cannot be undone. If a prosecutor is successful in that role, he or she should be rewarded, not penalized, for this service. Amended legislation should recognize this and ensure that public prosecutors receive fair consideration for their time spent as prosecutors.

B. Training Considerations

Judges in Jordan remain generalists. During the course of their careers they may hold a variety of positions from conciliation court to the court of cassation. They may hear cases ranging from complicated civil contract disputes, stolen cars, to matters of national security.

At some point, many are pulled out of their familiar roles in the courtroom and are assigned the role of prosecutor. They are expected to respond to crime scenes, build investigations, interact

¹¹ Some police and seasoned public prosecutors were blunt: they described young just-out-of-school public prosecutors as “over their heads” in leading investigations. This resulted in either incompetent investigations or arrogance with the police (or both).

¹² See Appendix A, p. 9, Suggested Length of Service as Prosecutor.

with forensic labs and other support agencies, comply with the law on criminal procedure, try cases, execute judgments, and inspect jails, detention centers, and prisons.

As one public prosecutor candidly put it, “we were never trained for any of this.” While most public prosecutors are comfortable with their theoretical training in the law, few, if any, ever receive practical training on the essentials of prosecution. They learn by observing cases presented by prosecutors while sitting as first instance judges. They observe police work while sitting as conciliation court judges. It is clear they help each other out once assigned prosecution duties and there are, presently, ad hoc training seminars. But beyond that a judge essentially sinks or swims when assigned prosecution duties.

The pre-visit survey suggests universal support for increased systematic training.¹³ Days of workshops and interviews suggest that those training needs can be broken down into three parts.

- Building the investigation
- Complying with the law on criminal procedure
- Emerging topics in the criminal law

i. Building the investigation

Almost all the public prosecutors emphasized the need to strengthen investigation skills. Jordanian law entrusts the responsibility to lead the investigation with the prosecutor. In reality, however, the police dominate the process. One reason is the fundamental lack of understanding (especially by young prosecutors) of how to manage a crime scene and build an investigation. The first hours or days after a crime are critical to a successful prosecution. Public prosecutors need to make correct decisions quickly. Thus, training on how to direct the police in the early phases of a case, the collection of evidence at the scene, and identifying relevant witnesses is essential.¹⁴

Training in this area should focus on creating mental checklists that focus the public prosecutor on the essential elements of a crime and exclude irrelevant material.¹⁵

Such training could be augmented by the creation of “guides” by the training and development unit of the Attorney General’s Office or the Judicial Council. These guides would spell out

¹³ See Appendix A, 100 percent of respondents agree that training is needed on appointment as a prosecutor and on an ongoing basis during a public prosecutor’s tenure.

¹⁴ Interviews with members of the police department reveal how emphatically the police believe this. Although likely exaggerated, investigators report they often must give the public prosecutor a list of what to do rather than waiting for the public prosecutor to tell them what to do.

¹⁵ Veteran prosecutors noted a common flaw in creating a trial dossier is the inclusion of irrelevant material. As one judge put it, “I read the thick file and at the end wonder -where’s the crime?”

(again in checklist form) the essentials for crime scene investigations. Guides of this sort are common in other countries and invaluable in the miasma of a significant crime scene.

The second phase of building the investigation training is building *effective* judicial investigations. Public prosecutors pointed out several topics where training would be helpful. These include interrogation techniques, building a strategic plan for a case, dealing with co-suspects, long-term investigative measures, and practical technical concerns such as dealing with DNA and other forensic support labs, extradition, and other technical legal measures.

ii. Training on compliance with the rules

Training should also include compliance with the law on criminal procedure. As many prosecutors pointed out – mistakes here cannot be undone. A trial judge has the benefit of lawyers to guide him or her and an appellate court to correct mistakes. But if a public prosecutor takes a statement beyond the time allocated in the rule or takes an investigative measure beyond what is allowed in the rules – the evidence is lost and cannot be recovered. As one public prosecutor put it – “it’s like building a house, if the foundation is rotten the structure will fail no matter how pretty the building on top.”

Showing remarkable candor, the public prosecutors repeatedly stated that too many cases are lost due to technical failures in the judicial investigation. The need to create extensive and ongoing training on compliance with the rules is urgent. Again, this training should be designed to create a deep, if not nearly automatic, understanding of what the rules require. Prosecutors should not have to wonder about to do – their training should allow them to proceed without hesitation.

iii. Training on specific emerging legal topics

Public prosecutors identified several substantive topics in which they believe ongoing training would help:

- **Financial Crimes:** Especially learning how to follow the paper trail associated with frauds, organized crime, trafficking, and corruption. Frauds and thefts are the most commonly prosecuted offenses in the Kingdom. Prosecutors report that they are perpetrated using ever changing methodologies and keeping up with the paper trail associated with those crimes is difficult. They also noted a high profile stock market manipulation case and wondered aloud whether their particular offices would be prepared to handle such a matter were it to occur in their jurisdiction.
- **Cybercrimes:** The means most often used to commit those financial crimes mentioned above is the computer. The public prosecutors showed a strong interest in computer forensics. They asked for “not just an afternoon” but an in-depth training on recovering hard drives, tracking down IP addresses, and the use of cell phone network systems. The prosecutors suggest this is a high volume area and they feel unprepared to handle high tech crimes.
- **Other Forensic Sciences:** The public prosecutors want updates on DNA, pathology, ballistics, and tool and fingerprint analysis.
- **The New Laws:** The law in Jordan is in flux. The new constitutional provisions fundamentally changed their jobs and a potential the law on criminal procedure may work substantial changes again. The public prosecutors want ongoing and timely training as changes are adopted.¹⁶
- **Other Specific Topics:** The other most common topics mentioned by the public prosecutors were training in human trafficking, money laundering, child abuse, sexual abuse, and family violence.¹⁷

Training should be ongoing, timely, and relevant and delivered to the right people. Some concern was expressed that past training was not matched with present needs of the prosecution

¹⁶ One of the sites visited was a morning in the judge’s workshop on proposed revisions to the law on criminal procedure. Some of the changes discussed are significant. For example, if public prosecutors are empowered to unilaterally decline cases (as a matter of prosecutorial discretion or using the “doctrine of opportunity”) the need for immediate training is self-evident.

¹⁷ Some of this is really training on public outreach – building confidence in public institutions like the judiciary is a challenge and the public prosecutors face substantial cultural barriers. For example, convincing families to permit autopsies is often difficult. The same holds true for the processing of family violence or sexual abuse cases. The prosecutors know that, especially in remote areas, residents are far more likely to resolve disputes without resorting to the criminal justice system. Training on best practices to increase local understanding and confidence in the process as well as navigating local customs themselves would be very useful.

(“why was I attending a course on civil contracts”). The public prosecutors outlined several “delivery” requests:

- The training should be delivered by experts in their field offering practical advice rather than theoretical lectures.
- The training should be in-depth and oriented to our present duties.
- Training should be offsite and remove us from the day-to-day distractions of our jobs.
- Training should be timely especially in light of how quickly the rules and statutes are changing.
- Public prosecutors are interested in international trends and practices but would like them delivered in the context of Jordanian traditions.
- Prosecutors would like to come prepared – advance publication of training material would allow the public prosecutors to hit the ground running.
- An ongoing committee consisting of line prosecutors and the training and development unit to identify relevant training topics would be helpful in providing relevant training.

Last, both the police and many public prosecutors were supportive of joint training programs. Joint training programs allow for more than information exchanges. Joint training encourages both sides of the investigation to truly understand each other’s role. Interviews with both the police and public prosecutors suggest this is an issue – both parties complain that the other does not understand their role, their strengths, and their limitations. Joint training will allow both sides to understand the other’s conditions.

In the specialization section below there is a proposal to create a specialized criminal bench. If such a proposal were adopted, a prolonged embedding with the police as part of a prosecutor’s original training regime could yield significant results and vastly improve the prosecutor’s ability to lead investigations.

C. Specialization

The initial survey suggested a broad-based support for the concept of specialization.¹⁸ In-depth exploration of the topic revealed a less clear picture. Specialization, in the context of the Jordanian Public Prosecution System, takes many forms. At its broadest it means a division between the criminal and civil bench. It may also mean a division among public prosecutors between investigating judges and trial prosecutors or it may mean creating specialists by topic (such as corruption experts, financial crime experts, and the like). All of these subdivisions sparked discussion in interviews and at the workshops.

Although it is difficult to measure, there is substantial support for a division between the criminal and civil bench. This would provide that after an initial term as a conciliation judge,

¹⁸ Appendix A, 83 percent of respondents agreed specialization would increase efficiency and build strong cases.

appropriately skilled practitioners would be identified and invited into the criminal bench. After specialized training, the judge would serve as a prosecutor, criminal trial, or appellate judge for the duration of their career.

The Jordanian criminal system is large enough and sophisticated enough to support this level of specialization. And there are many benefits to a specialized criminal bench. As is mentioned earlier, the public prosecutors are finding it difficult to match the police in experience and knowledge. This is inconsistent with Jordanian law and may act to the detriment of the protection of human rights. A specialized bench will concentrate experience and knowledge in the hands of a select group of career practitioners. This puts them in a better position to comply with the law, give meaningful direction to the police, and produce stronger cases.

At some level it seems inefficient, if not an outright waste, to invest significant time and effort in training a prosecutor only to pull him or her into civil work down the road. Moving an experienced prosecutor into civil practice wastes acquired criminal wisdom as well. This precious resource should be preserved for criminal work.¹⁹

Such a career division between the criminal and civil bench is common in larger, more complex judicial systems. It makes sense for Jordan's needs. It will promote stability in uncertain times. The judicial culture in Jordan, in part, relies on a web of knowledge and interpersonal relationships with the police. Establishing a specialized criminal bench will concentrate this experience and knowledge and enhance the judiciary's ability to enforce the rule of law.

The second area of potential specialization is between investigating judges and trial judges. Such a division is not uncommon in other jurisdictions and can result in real efficiency. Informally, some larger offices in Jordan already do this with public prosecutors rotating between investigative work and trial work on a periodic basis.

While these informal arrangements are useful – they should remain just that – informal arrangements. There are only 91 prosecutors in the country. Many are assigned to offices with fewer than 6 public prosecutors. Obviously, public prosecutors in the small offices must be available for any duty, even if it means investigation in the morning, trial in the afternoon, jail inspection at night. Small offices by definition require Jacks-of-all-trades. The small number of prosecutors nationwide simply limits splitting them between investigations and trials.

The same follows for specialization by topic. It is, of course, very useful to focus specialized training and experience in a few prosecutors. And, again, to some degree such specialization exists in the limited jurisdiction offices such as the high felony unit. But in a 91 prosecutor system this sort of specialization has its limits. There simply aren't enough prosecutors to

¹⁹ The public prosecutors are well aware of the semi-crisis created when several experienced high felony prosecutors were removed all at once. Whatever the motive for this change, there is a strong desire to avoid similar disruptions in the future.

designate another dozen or so as specialists. There is simply too big a demand for generalists throughout the country.

Again, it may be best to leave such specialties as informal designations. Prosecutors become specialists simply because of the caseload. If a certain new type of fraud first appears in a given jurisdiction it makes sense that the office becomes the resource when the same issue later appears in other jurisdictions.²⁰

Finally, informal topic matter specialization is enhanced by the creation of a trained, stable, specialized criminal bench. Retaining specialized criminal knowledge (and not sending it off to do civil work) will increase the informal pool of technical advice available to other prosecutors.

D. Administrative Enhancements

i. Administrative improvements

Discussion on administrative improvements centered on two general areas. The first was a discussion of the source of delays in the process of reaching a judgment. These included hailing witnesses to court, communication with other agencies, finance issues, and support staff shortages. The second discussion focused on substantial failure of the system to execute judgments once they were obtained.

Database Links: The lack of a consistent link to databases held by other units of government was cited as a constant source of delay. For example, criminal history records exist in Jordan – especially in the prison system. A prosecutor wishing to make a detention decision or charge an enhanced crime based on prior convictions must send a written request to the relevant agency and wait for a return. This can consume anywhere from a week to a month. Likewise, testing results on fingerprints, ballistics, and DNA are not electronically available. Again, the prosecutor must make an official request and must wait for an official response. Prosecutors report this may take months.

As a result, suspects are needlessly extended in detention or charging and investigative timelines are not met. Public prosecutors often must choose between injustice and waste. Efforts to provide electronic links between the public prosecutor's office, the police, and other existing databases must be a priority.²¹

Clarify Relations With Police: A second source of delay revolves around the sensitive relationship between the public prosecutor and the police. Most public prosecutors claim

²⁰ This links, however, to the public prosecutor hierarchy discussion in the legislative section. This sort of helping hand arrangement is difficult to administer unless there is a public prosecutor hierarchy able to enter into short-term ad hoc exchanges. Waiting for the whole Judicial Council to meet and consider the issue is far too cumbersome.

²¹ A good starting point may be a centralized criminal record database, complete with the requisite defendant's identification data. Such a database should link every public prosecutor office, sitting judge, police station, border checkpoint, and any other agency relevant to the criminal justice process.

(correctly) that they enjoy a good personal relationship with the officers in their jurisdiction. The more experienced public prosecutors note that by force of personality they can adequately perform their duties as the head of the investigation. But, privately, the public prosecutors will also complain of the delays and inefficiency in the present system. They may not learn of the crimes at all or at least not until long after the crime scene was processed or witnesses scattered to the four winds. Investigative requests go to police supervisors who in turn delegate the task to someone in the ranks. And as one public prosecutor put it, “they send someone new every time.” Because of tight timeframes associated with the initial investigation phase (by and large 24 hours) critical evidence is either lost or deemed inadmissible.

Reform in this area takes two forms. First, the public prosecutors suggest statutory amendments specifying their authority over the police during the investigation. Not just the fact that they are “the head of the investigation” (or as one prosecutor put it, “whatever that means” but creating the right to order individual officers to complete specific tasks related to the case and creating the authority to enforce that order.²²

The force of personality argument suggested veteran prosecutors has its limits. The prosecutors related stories of being abandoned by the police in hostile crime scenes when the police disagreed with an order they issued and simply left. While several public prosecutors pointed out that the ability of the prosecutors to lead the investigation is spelled out in law and that their relationship with the police is defined as well, most public prosecutors believe it is not enough. There is a need to consolidate all of these powers and responsibilities in one place. More importantly there is a need to couple the stated authority with real enforcement powers. Illegal detention, police abuse, even torture by the police is beyond the public prosecutor’s ambit to resolve.²³

A second suggestion for increasing the public prosecutor’s ability to control the investigation of crimes is the creation of judicial police. Under present law any officer is designated a judicial police officer when completing a task designated by the prosecutor. The public prosecutors, however, want officers designated full-time to the investigative task related to a judicial investigation. Such officers would report to the public prosecutor’s office and be part of the public prosecutor’s hierarchy.²⁴

²² The bulk of prosecutors complain, strongly, that their authority is toothless. Complaints about police performance go to police supervisors. Actual violations of law go to special police courts (even if the officer’s conduct is off-duty). In most cases the public prosecutors never know what happens in those specialty courts. The public prosecutors want enforcement authority over the police and want the police to be held accountable in civilian courts like everyone else.

²³ Some public prosecutors would go even further. There are a variety of commissions and other bodies that can pull cases out of the criminal justice system. Some public prosecutors would like to see all of these commissions abolished and all cases set on an equal footing in the civilian courts.

²⁴ A few public prosecutors suggested a smaller version of this: a fugitive unit. Although a small country, a suspect can hide in Jordan. Streets have no names, homes have no addresses, and families protect each other. Failure to find a suspect is a real issue. A trained fugitive unit would be of great assistance.

Judicial police are common in code-based countries. Their existence helps delineate between the two distinct roles police play (patrol and keeping peace on the street versus the investigation crimes). But they are expensive and pressing for their creation may provoke the Ministry of Justice and the Minister of the Interior who will see this as yet another broadening of the authority of the Judicial Council.

Creating a set of rules strengthening the authority of the public prosecution over the police may be the most practical first step. Any such clarification must include some mechanism for holding the police accountable if they fail to respond to a legitimate investigatory request. Ultimately the system must proceed on a cooperative basis between the prosecutors and the police. But cooperation is often engendered when the parties know a worse consequence awaits if they don't cooperate.

Other Miscellaneous Suggestions: The public prosecutors also identified a smaller set of improvements to increase effectiveness:

- The prosecutors desire the use of state funded cars and protection in responding to crime scenes – the public prosecutors do not want to be left at the whim of the police in getting to and from a crime scene.
- Direct access and control over forensic support labs – the public prosecutors again complained about the official request process and delays associated with funding for follow-up tests. The prosecutors relayed stories where victims themselves paid for forensic testing in order to get the case moving.
- Mandate immediate notification of a crime to the public prosecutors – if the public prosecutor is playing catch-up with the police, delay (or worse, the loss of evidence) will follow.
- Increase office support staff – if a recorder or typist is out or position vacant, public prosecutors must share support staff – often delaying the creation of indictments reports or minutes.
- Increase the number of public prosecutors – as is discussed below, the public prosecutors are barely keeping up with their statutory investigation tasks. Crime scene visits, jail monitoring, and other non-case investigation tasks often suffer as a result.
- Reinstate limited nationwide jurisdiction – prior law permitted designation of a public prosecutor with national jurisdiction if a case requires. The public prosecutors related that one case had to be removed to a military tribunal because there was no relevant national jurisdiction within the ranks of the prosecution service.
- Witness protection – as a general matter there is no such thing in Jordan. Witnesses often are afraid to cooperate thus delaying the administration of justice.

- Training on the police treatment of witnesses – sometimes the police misunderstand the difference between a summons and a warrant. They may arrest a witness who simply was being summoned for a court appearance. This often sends a message to every other witness that it's best not to cooperate.

ii. Execution of judgments

One administrative failure noted by the public prosecutors and borne out by statistics is in the execution of judgments. This goes beyond delay; it suggests a substantial breakdown in the process. It appears that up to 80 percent of the judgments obtained by the Public Prosecution Service are never executed. Thus, much of the work of the public prosecutor is rendered meaningless.²⁵

Execution of judgment sounds simple. The judgment is rendered, returned to the public prosecutor's office for verification and then sent off to the execution department to be served and carried out. But in reality it's not that simple. After the judgments are returned from court they require verification of several pieces of identification including address, four-part name, national identification number, and more. In a high percentage of cases some of this information is missing or incomplete. Likewise, a review of the initial police reports reveals similar gaps and the missing information is never collected during the court process.²⁶

Even if the defendant's identity is verified, there still lies little chance of execution. The police face significant difficulties finding defendants in a country with few street or home addresses. Other databases such as driver's licenses, government benefit plans, employment records, and border station reports are not linked to each other, the execution department, or the police. Frankly, there appears to be little resources, much less will, to tackle this task.

More than a few public prosecutors summed up the execution process – if it happens at all it's by "happenstance." The defendant may get arrested for a new offense and the old judgment is noted, an angry neighbor may inform the police if they know about the prior case. But these are few and far between and in the end, the public prosecutors agree, execution is the "graveyard of cases."

This failure seriously undercuts public confidence in the court system. The Jordanian Civil Criminal Justice System already competes with security courts, administrative detention, and long-held local dispute resolution systems. If the average citizen understands that the likelihood

²⁵ See Appendix B, Table of Cases Disposed and Executed in 2010 and 2011 in Amman Conciliation and First Instance Courts. Interviews with the other public prosecutor's offices suggest similar results. One exception is the high felony courts where the number of judgments executed is much, much higher. A note of caution in the use of these numbers, the execution rate may not be appropriately controlled for multiple defendants and for appeals which require re-execution at each step.

²⁶ Particularly because many proceedings are held in absentia; about 25 percent of cases are heard without the defendant at all. Out-of-custody defendants are also not usually on hand when the verdict is returned.

of success in the courts is only one in five it is entirely rationale for that citizen to take matters into his own hands, or beg a favor from a district governor to use administrative detention until some resolution of the case is made. Conversely, it is equally rational for a suspect to ignore a summons to court as there is little likelihood of an adverse consequence whatever the outcome of the court proceedings.

Solving this deficiency should be a high priority. Two options exist for tackling this task. The first, borrowed from other rule of law missions, is to engage the services of a court administration consultant and examine the process from stem-to-stern. This could include improving the collection and transmission of needed identification data and giving the execution departments more tools to find defendants and enforce judgments.

The second, suggested by a public prosecutor, is a pilot program based on scraping the current execution department model. Put simply, the public prosecutor suggests that if his office were assigned three police officers, a dedicated prosecutor, and a car exclusively dedicated to the task of executing judgments, he could triple the rate of successful execution. When this plan was presented to several other public prosecutors, they sounded general agreement that the rate of execution would increase substantially.

Whether using one option or both, something should be done. The failure to execute judgments is an affront to the rule of law. It is a tremendous waste of resources and undermines respect and confidence in a vital government institution.

E. Resources

i. Human resources

Although they will not admit it, the Public Prosecution Service is understaffed. In group meetings and workshops public prosecutors insist that they are keeping up with their caseload. And a first look at statistics supports this view. Despite seven to nine percent increases in each of the past two years, each office appears to dispose of roughly the same number of cases as it took in.²⁷

But when surveyed privately, the public prosecutors suggest another story. With 65.5 percent of respondents agreeing that “the lack of human resources is one of the reasons leading to the accumulation of cases and to delay.”²⁸

When pressed, the public prosecutors admit that just keeping up with investigations is done at great personal cost. And the public prosecutors’ duties beyond investigation often suffer. Visits to jails, attendance at autopsies, crime scene response must be piled on top – it is completed on off-hours or delayed.

²⁷ See Appendix C – Case Filings and Dispositions in the Amman Public Prosecutors Offices.

²⁸ Appendix A, p. 7.

The lack of time triggered by staff shortages “kills creativity” in putting cases together and causes the prosecutor to defer to the police despite the law’s command the investigation.

In smaller offices the problem is greater. The lack of backup means substantial delay if a public prosecutor falls ill or takes vacation. Likewise, the arrival of large or complex cases will, all by themselves, threaten the smooth operation of a small office.

The public prosecutors expressed similar concerns about support staff. If one is missing, the public prosecutors must share support resources causing inevitable delays. They also expressed concern about the level of training for support staff noting that while they may be good typists; their legal support skills could use improvement.²⁹

Priority should be given to adequate staffing for the public prosecutor’s office. At best, staff levels are “teetering on the brink” and, in some offices, are one vacation, illness or injury away from disaster.

ii. Facilities

Charitably put, the quality and appearance of the public prosecutor’s offices are uneven. The attorney general’s offices in the Palace of Justice and the new facility for the high felony unit are up-to-date and dignified. Some regional offices are aging but perfectly serviceable.³⁰

But several offices are substandard. They are crowded and in poor physical condition (right down to stuffing coming out of the chairs). There is no orderly separation from the public or any sense of security. While individual offices and registry offices are neat and of sufficient size, common areas were gritty and bordered on chaotic.

The buildings themselves were hardly recognizable as public prosecutor offices. The space rented by the courts is in buildings with a variety of other private enterprises. The Public Prosecutor’s Office was not well-marked and gave no signal of the sovereignty of the court.

The Chief Public Prosecutor put it bluntly decrying that some of the facilities sent a “very poor” message to the public. And the chief is right, the premises of a public prosecutor, as part of the judicial authority, ought to create a dignified image for the public. The public prosecutor is an expression of state sovereignty and the facilities should be clean and modern. Many public prosecutor offices simply fail that test.

²⁹ The public prosecutors also spoke up about the low pay for support staff urging consideration of substantial pay raises. Interestingly, no public prosecutor complained about their own pay. If nothing else, this is a testament to their devotion to their jobs.

³⁰ While not a huge issue, most offices are not in the same building as the courtrooms. Public prosecutors admit that this can be source of delay and inefficiency as files must be shuttled back-and-forth and the public prosecutors must travel for hearings. As new facilities are obtained, the court planners may want to consider co-locating the public prosecutors with the courtrooms in which they work.

The Judicial Council should prioritize bringing all public prosecutor offices up to minimum standard – including suitable buildings, office space, and furnishings. As a matter of public confidence, the seriousness of the facilities should match the seriousness of the work.

V. PLAN SUMMARY

A. Legislative Steps

- (1) Amend the law on the judiciary to include the public prosecutor as a separate body within the judiciary and within the control of the Judicial Council but delegate day-to-day administration of the prosecution service to the Chief Public Prosecutor.
- (2) Amend statutory provisions to include minimum qualifications for service as a public prosecutor, protections for public prosecutors while serving their terms, and giving credit to the public prosecutors for their years of service when considering promotions.

B. Training

- (1) Create training programs on building investigations including crime scene management, forensics, and building effective case strategies. These training opportunities should include joint training sessions with the police.
- (2) Create training programs that ensure compliance with the law on criminal procedure. This program should have special emphasize that those decisions a public prosecutor makes that cannot be undone at later stages in the process. This should also include creating “guides” to aid in quick decision making.
- (3) Create timely training sessions on new laws especially the proposed new law on criminal procedure as well as financial crimes and computer forensics.

C. Specialization

- (1) Plan for the creation of a specialized criminal bench including selection criteria, entry level training, and a fair promotional track.
- (2) Amend the procedural/administrative rules to allow the Chief Public Prosecutor to make ad hoc assignments of subject matter experts to various district offices as need arises.

D. Administrative Enhancements

- (1) Create database links between the public prosecutors, police, and other government agencies that have information relevant to the administration of justice.
- (2) Amend the law on criminal procedure to clarify the public prosecutor's authority to order investigative measures and strengthen the public prosecutor's ability to enforce these orders including measures allowing the public prosecutors to hold the police accountable for malfeasance of duty.
- (3) Consider smaller steps to reinforce the public prosecutor's ability to investigate crimes – and enhance transport and protection services at crime scenes, enhance public prosecutor control over forensics support labs and consider founding a witness protection program.
- (4) Create a two-fold judgment execution improvement plan including a court administrative expert to overhaul the execution process and a pilot program with a dedicated prosecutor and police in one jurisdiction in place of its execution department to see if a substantially greater number of executions will follow.

E. Resources

- (1) Identify the most understaffed public prosecutor's office and supplement both prosecution staff and administrative support staff.
- (2) Provide physical improvements in the several public prosecutor offices with an eye towards providing facilities that reflect the proper image and sovereignty of the court.

Respectfully submitted,

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For DPK – TETRA TECH
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